



December 16, 1999

Mr. Steven D. Monte'  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
2014 Main Street, Room 206  
Dallas, Texas 75201

OR99-3654

Dear Mr. Monte':

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130424.

The City of Dallas (the "city") received a request for a copy of the Minnesota Multiphasic Personality Inventory ("MMPI"), a psychological test taken by the requestor. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.121 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.<sup>1</sup>

You claim that the MMPI is excepted from disclosure by section 552.101 of the Government Code in conjunction with section 465.22 of the Texas Administrative Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other laws. Generally, administrative rules cannot amend the Public Information Act by creating new exceptions. Open Records Decision No. 527 (1989).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Absent specific authority, a governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101. Open Records Decision Nos. 484 (1987), 479 (1987), 392 (1983), 216 (1978), 173 (1977), 152 (1977). Accordingly, section 465.22 of the Texas Administrative Code does not make the submitted material confidential by law; thus the city may not withhold the information pursuant to section 552.101.

Additionally, you assert that the information is excepted from disclosure pursuant to section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure a test item developed by a licensing agency or governmental body. "Test item" includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 at 6 (1994). The definition and usage of the MMPI was discussed in Open Records Decision No. 600 (1992) as follows:

The MMPI has been defined as a "personality questionnaire consisting of 550 statements concerning behavior, feelings, social attitudes, and frank symptoms of psychopathology." CAMPBELL, PSYCHIATRIC DICTIONARY 640 (5th ed. 1981). It assumes certain "components" of the personality, such as tendencies toward hysteria, hypochondria, or mood swings, and scores people as to these traits on a numerical scale to compare them to established norms. 18 ENCYCLOPEDIA AMERICANA, *Mental Tests* 649, 650 (1976); 2 AM. JUR. Proof of Facts 3d *Facial Injuries* § 14 (1988). *Id.* This kind of test is used to examine an individual's feelings and attitudes in an attempt to elicit information about his personality characteristics.

We do not believe that the MMPI evaluates the applicant's knowledge or ability in a particular area. Therefore, you may not withhold the MMPI under section 552.122(b). The MMPI must be released to the requestor.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

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<sup>2</sup>You have noted that the MMPI may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ch

Ref: ID# 130424

Encl. Submitted documents

cc: Mr. Danny Robinson  
1905 Tewa Trail  
DeSoto, Texas 75115  
(w/o enclosures)